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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 TERESA ROMERO, individually and as  
10 Special Administrator of the Estate of  
ADAN ADRIAN MADRID,

Case No. 2:11-cv-00755-MMD-GWF

11 v.  
12

Plaintiff,

13 MAITE AU QUIROGA, et al.,  
14

Defendants.

ORDER

15  
16 **I. SUMMARY**

17 Before the Court is Plaintiff's Fourth Amended Application for Default Judgment  
18 Against Defendant Maite Au Quiroga ("the Motion"). (Dkt. no. 89.) The Court denied  
19 previous applications for default judgment without prejudice to Plaintiff to bring another  
20 application to address the deficiencies outlined in the Court's previous orders. The Court  
21 finds that Plaintiff has properly addressed these deficiencies and therefore grants  
22 Plaintiff's Application.

23 **II. BACKGROUND**

24 The relevant facts and procedural history are recited in the Court's previous Order  
25 (dkt. no. 87). In that Order, the Court found that Plaintiff has satisfied the procedural  
26 requirements for default judgment pursuant to Fed. R. Civ. P. 55(b). However, the Court  
27 denied Plaintiff's application for default judgment, finding that Plaintiff failed to establish  
28 several factors under *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

1       **III. DISCUSSION**

2       In *Eitel v. McCool*, 782 F.2d 1470, the Ninth Circuit identified the following factors  
3       as relevant to the exercise of the court's discretion in determining whether to grant  
4       default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of the  
5       plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at  
6       stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether  
7       the default was due to the excusable neglect; and (7) the strong policy underlying the  
8       Federal Rules of Civil Procedure favoring decisions on the merits. *Id.* at 1471-72. The  
9       Court previously found that Plaintiff failed to demonstrate the merits of her negligence  
10      claim and the sufficiency of the Complaint. The Court also questioned Plaintiff's premise  
11      for seeking \$350,000.00 in damages.

12      Plaintiff's current Application adequately addresses the deficiencies outlined in the  
13      Court's previous Order. In terms of the merits of Plaintiff's claim and sufficiency of the  
14      Complaint, the information in the Coroner's Autopsy Report (dkt. no. 88-5) augmented  
15      the allegations in the Complaint to demonstrate negligence liability against Defendant.  
16      Given Defendant's failure to participate in this case, the Court must resolve any potential  
17      factual dispute in favor of Plaintiff. Moreover, requiring further evidence would be highly  
18      prejudicial to Plaintiff because Plaintiff cannot conduct any discovery against Defendant.  
19      Plaintiff cannot be expected to continue to litigate against a party who has refused to  
20      appear. The Court thus finds that Plaintiff has established her negligence claim against  
21      Defendant based on the allegations in the Complaint and the information in the  
22      Coroner's Autopsy Report.

23      While the amount of damage is substantial, particularly given the amount of  
24      settlement reached with the Clark County Defendants, the Court finds that Plaintiff has  
25      provided a sufficient basis to distinguish Clark County Defendants' conduct and support  
26      her damage request against Defendant.

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1 **IV. CONCLUSION**

2 It is therefore ordered that Plaintiff's Fourth Amended Application for Default  
3 Judgment Against Defendant Maite Au Quiroga (dkt. no. 88) is granted. The Clerk of the  
4 Court shall enter judgment against Defendant Maite Au Quiroga in the amount of  
5 \$350,000.00. It is further ordered that Plaintiff's alternative motion to remand this case  
6 to state court (dkt. no. 89) is denied as moot.

7 DATED THIS 8<sup>th</sup> day of January 2014.

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11 MIRANDA M. DU  
12 UNITED STATES DISTRICT JUDGE

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